

Introduced by Senator Cedillo

February 18, 2010

An act to amend Section 12206 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1216, as introduced, Cedillo. Taxation: low-income housing credit.

Existing law establishes a low-income housing tax credit program, administered by the California Tax Credit Allocation Committee, which provides procedures and requirements for the allocation of state tax credit amounts among low-income housing projects based on federal law.

This bill would authorize the California Tax Credit Allocation Committee, in any year in which it has a surplus of state insurance tax credits to be allocated pursuant to the above provisions, with the approval of the applicant, to allocate those credits in excess of 30% of the eligible basis of a new building or rehabilitation expenditure and reduce the amount of federal credits accordingly to ensure that the combined amount of state and federal credit shall not exceed the total credit allowable, provided the state credits shall not exceed 80% of the eligible basis, as prescribed.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12206 of the Revenue and Taxation Code
2 is amended to read:

1 12206. (a) (1) There shall be allowed as a credit against the
2 “tax” (as defined by Section 12201) a state low-income housing
3 tax credit in an amount equal to the amount determined in
4 subdivision (c), computed in accordance with Section 42 of the
5 Internal Revenue Code, except as otherwise provided in this
6 section.

7 (2) “Taxpayer,” for purposes of this section, means the sole
8 owner in the case of a “C” corporation, the partners in the case of
9 a partnership, and the shareholders in the case of an “S”
10 corporation.

11 (3) “Housing sponsor,” for purposes of this section, means the
12 sole owner in the case of a “C” corporation, the partnership in the
13 case of a partnership, and the “S” corporation in the case of an “S”
14 corporation.

15 (b) (1) The amount of the credit allocated to any housing
16 sponsor shall be authorized by the California Tax Credit Allocation
17 Committee, or any successor thereof, based on a project’s need
18 for the credit for economic feasibility in accordance with the
19 requirements of this section.

20 (A) Except for projects to provide farmworker housing, as
21 defined in subdivision (h) of Section 50199.7 of the Health and
22 Safety Code, that are allocated credits solely under the set-aside
23 described in subdivision (c) of Section 50199.20 of the Health and
24 Safety Code, the low-income housing project shall be located in
25 California and shall meet either of the following requirements:

26 (i) The project’s housing sponsor shall have been allocated by
27 the California Tax Credit Allocation Committee a credit for federal
28 income tax purposes under Section 42 of the Internal Revenue
29 Code.

30 (ii) It shall qualify for a credit under Section 42(h)(4)(B) of the
31 Internal Revenue Code.

32 (B) The California Tax Credit Allocation Committee shall not
33 require fees for the credit under this section in addition to those
34 fees required for applications for the tax credit pursuant to Section
35 42 of the Internal Revenue Code. The committee may require a
36 fee if the application for the credit under this section is submitted
37 in a calendar year after the year the application is submitted for
38 the federal tax credit.

39 (C) (i) For a project that receives a preliminary reservation of
40 the state low-income housing tax credit, allowed pursuant to

subdivision (a), on or after January 1, 2009, and before January 1, 2016, the credit shall be allocated to the partners of a partnership owning the project in accordance with the partnership agreement, regardless of how the federal low-income housing tax credit with respect to the project is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, within the meaning of Section 704(b) of the Internal Revenue Code.

(ii) This subparagraph shall not apply to a project that receives a preliminary reservation of state low-income housing tax credits under the set-aside described in subdivision (c) of Section 50199.20 of the Health and Safety Code unless the project also receives a preliminary reservation of federal low-income housing tax credits.

(iii) This subparagraph shall cease to be operative with respect to any project that receives a preliminary reservation of a credit on or after January 1, 2016.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an “S” corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.

(D) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.

(E) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(F) No credit shall be allocated under this section to buildings located in a difficult development area or a qualified census tract as defined in Section 42 of the Internal Revenue Code for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130 percent of that amount pursuant to Section 42(d)(5)(C) of the Internal Revenue Code, unless the committee reduces the amount of federal credit, with the approval of the applicant, so that the combined amount of federal and state credit shall not exceed the total credit allowable pursuant to this section and Section 42(b) of the Internal Revenue Code, computed

1 without regard to Section 42(d)(5)(C) of the Internal Revenue
2 Code.

3 (G) (i) *The California Tax Credit Allocation Committee, in any*
4 *year in which it has a surplus of state credits to be allocated under*
5 *this section, may, with the approval of the applicant, allocate those*
6 *credits in excess of 30 percent of the eligible basis of a new*
7 *building or rehabilitation expenditure and reduce the amount of*
8 *federal credits accordingly to ensure that the combined amount*
9 *of state and federal credit shall not exceed the total credit*
10 *allowable pursuant to this section and Section 42(b) of the Internal*
11 *Revenue Code, provided the state credits do not exceed 80 percent*
12 *of the eligible basis.*

13 (ii) *The California Tax Credit Allocation Committee shall award*
14 *any state tax credits allowed under this section first to those*
15 *projects that the committee determines need a basis boost prior*
16 *to awarding any state credits that are in excess of the normal basis*
17 *boost to a particular project.*

18 (c) Section 42(b) of the Internal Revenue Code shall be modified
19 as follows:

20 (1) In the case of any qualified low-income building that receives
21 an allocation after 1989 and is a new building not federally
22 subsidized, the term “applicable percentage” means the following:

23 (A) For each of the first three years, the percentage prescribed
24 by the Secretary of the Treasury for new buildings that are not
25 federally subsidized for the taxable year, determined in accordance
26 with the requirements of Section 42(b)(2) of the Internal Revenue
27 Code, in lieu of the percentage prescribed in Section 42(b)(1)(A)
28 of the Internal Revenue Code.

29 (B) For the fourth year, the difference between 30 percent and
30 the sum of the applicable percentages for the first three years.

31 (2) In the case of any qualified low-income building that receives
32 an allocation after 1989 and that is a new building that is federally
33 subsidized or that is an existing building that is “at risk of
34 conversion,” the term “applicable percentage” means the following:

35 (A) For each of the first three years, the percentage prescribed
36 by the Secretary of the Treasury for new buildings that are federally
37 subsidized for the taxable year.

38 (B) For the fourth year, the difference between 13 percent and
39 the sum of the applicable percentages for the first three years.

1 (3) For purposes of this section, the term “at risk of conversion,”
2 with respect to an existing property means a property that satisfies
3 all of the following criteria:

4 (A) The property is a multifamily rental housing development
5 in which at least 50 percent of the units receive governmental
6 assistance pursuant to any of the following:

7 (i) New construction, substantial rehabilitation, moderate
8 rehabilitation, property disposition, and loan management set-aside
9 programs, or any other program providing project-based assistance
10 pursuant to Section 8 of the United States Housing Act of 1937,
11 Section 1437f of Title 42 of the United States Code, as amended.

12 (ii) The Below-Market-Interest-Rate Program pursuant to
13 Section 221(d)(3) of the National Housing Act, Sections
14 1715l(d)(3) and (5) of Title 12 of the United States Code.

15 (iii) Section 236 of the National Housing Act, Section 1715z-1
16 of Title 12 of the United States Code.

17 (iv) Programs for rent supplement assistance pursuant to Section
18 101 of the Housing and Urban Development Act of 1965, Section
19 1701s of Title 12 of the United States Code, as amended.

20 (v) Programs pursuant to Section 515 of the Housing Act of
21 1949, Section 1485 of Title 42 of the United States Code, as
22 amended.

23 (vi) The low-income housing credit program set forth in Section
24 42 of the Internal Revenue Code.

25 (B) The restrictions on rent and income levels will terminate or
26 the federal insured mortgage on the property is eligible for
27 prepayment any time within five years before or after the date of
28 application to the California Tax Credit Allocation Committee.

29 (C) The entity acquiring the property enters into a regulatory
30 agreement that requires the property to be operated in accordance
31 with the requirements of this section for a period equal to the
32 greater of 55 years or the life of the property.

33 (D) The property satisfies the requirements of Section 42(e) of
34 the Internal Revenue Code regarding rehabilitation expenditures,
35 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
36 apply.

37 (d) The term “qualified low-income housing project” as defined
38 in Section 42(c)(2) of the Internal Revenue Code is modified by
39 adding the following requirements:

1 (1) The taxpayer shall be entitled to receive a cash distribution
2 from the operations of the project, after funding required reserves,
3 which, at the election of the taxpayer, is equal to:

4 (A) An amount not to exceed 8 percent of the lesser of:

5 (i) The owner equity which shall include the amount of the
6 capital contributions actually paid to the housing sponsor and shall
7 not include any amounts until they are paid on an investor note.

8 (ii) Twenty percent of the adjusted basis of the building as of
9 the close of the first taxable year of the credit period.

10 (B) The amount of the cashflow from those units in the building
11 that are not low-income units. For purposes of computing cashflow
12 under this subparagraph, operating costs shall be allocated to the
13 low-income units using the “floor space fraction,” as defined in
14 Section 42 of the Internal Revenue Code.

15 (C) Any amount allowed to be distributed under subparagraph
16 (A) that is not available for distribution during the first five years
17 of the compliance period may accumulate and be distributed any
18 time during the first 15 years of the compliance period but not
19 thereafter.

20 (2) The limitation on return shall apply in the aggregate to the
21 partners if the housing sponsor is a partnership and in the aggregate
22 to the shareholders if the housing sponsor is an “S” corporation.

23 (3) The housing sponsor shall apply any cash available for
24 distribution in excess of the amount eligible to be distributed under
25 paragraph (1) to reduce the rent on rent-restricted units or to
26 increase the number of rent-restricted units subject to the tests of
27 Section 42(g)(1) of the Internal Revenue Code.

28 (e) The provisions of Section 42(f) of the Internal Revenue Code
29 shall be modified as follows:

30 (1) The term “credit period” as defined in Section 42(f)(1) of
31 the Internal Revenue Code is modified by substituting “four taxable
32 years” for “10 taxable years.”

33 (2) The special rule for the first taxable year of the credit period
34 under Section 42(f)(2) of the Internal Revenue Code shall not apply
35 to the tax credit under this section.

36 (3) Section 42(f)(3) of the Internal Revenue Code is modified
37 to read:

38 If, as of the close of any taxable year in the compliance period,
39 after the first year of the credit period, the qualified basis of any
40 building exceeds the qualified basis of that building as of the close

1 of the first year of the credit period, the housing sponsor, to the
2 extent of its tax credit allocation, shall be eligible for a credit on
3 the excess in an amount equal to the applicable percentage
4 determined pursuant to subdivision (c) for the four-year period
5 beginning with the later of the taxable years in which the increase
6 in qualified basis occurs.

7 (f) The provisions of Section 42(h) of the Internal Revenue
8 Code shall be modified as follows:

9 (1) Section 42(h)(2) of the Internal Revenue Code shall not be
10 applicable and instead the following provisions shall be applicable:

11 The total amount for the four-year credit period of the housing
12 credit dollars allocated in a calendar year to any building shall
13 reduce the aggregate housing credit dollar amount of the California
14 Tax Credit Allocation Committee for the calendar year in which
15 the allocation is made.

16 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
17 (7), and (8) of Section 42(h) of the Internal Revenue Code shall
18 not be applicable.

19 (g) The aggregate housing credit dollar amount that may be
20 allocated annually by the California Tax Credit Allocation
21 Committee pursuant to this section, Section 17058, and Section
22 23610.5 shall be an amount equal to the sum of all the following:

23 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
24 year, and, for the 2002 calendar year and each calendar year
25 thereafter, seventy million dollars (\$70,000,000) increased by the
26 percentage, if any, by which the Consumer Price Index for the
27 preceding calendar year exceeds the Consumer Price Index for the
28 2001 calendar year. For the purposes of this paragraph, the term
29 “Consumer Price Index” means the last Consumer Price Index for
30 all urban consumers published by the federal Department of Labor.

31 (2) The unused housing credit ceiling, if any, for the preceding
32 calendar years.

33 (3) The amount of housing credit ceiling returned in the calendar
34 year. For purposes of this paragraph, the amount of housing credit
35 dollar amount returned in the calendar year equals the housing
36 credit dollar amount previously allocated to any project that does
37 not become a qualified low-income housing project within the
38 period required by this section or to any project with respect to
39 which an allocation is canceled by mutual consent of the California
40 Tax Credit Allocation Committee and the allocation recipient.

(4) Five hundred thousand dollars (\$500,000) per calendar year for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(5) The amount of any unallocated or returned credits under former Sections 17053.14, 23608.2, and 23608.3, as those sections read prior to January 1, 2009, until fully exhausted for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(h) The term “compliance period” as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.

(i) (1) Section 42(j) of the Internal Revenue Code shall not be applicable and the provisions in paragraph (2) shall be substituted in its place.

(2) The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code, shall apply, providing the agreement includes all of the following provisions:

(A) A term not less than the compliance period.

(B) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(C) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(D) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(E) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(F) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee and the local

1 agency that can enforce the regulatory agreement if there is a
2 determination by the Internal Revenue Service that the project is
3 not in compliance with Section 42(g) of the Internal Revenue Code.

4 (G) A requirement that the housing sponsor, as security for the
5 performance of the housing sponsor's obligations under the
6 regulatory agreement, assign the housing sponsor's interest in rents
7 that it receives from the project, provided that until there is a
8 default under the regulatory agreement, the housing sponsor is
9 entitled to collect and retain the rents.

10 (H) The remedies available in the event of a default under the
11 regulatory agreement that is not cured within a reasonable cure
12 period, include, but are not limited to, allowing any of the parties
13 designated to enforce the regulatory agreement to collect all rents
14 with respect to the project; taking possession of the project and
15 operating the project in accordance with the regulatory agreement
16 until the enforcer determines the housing sponsor is in a position
17 to operate the project in accordance with the regulatory agreement;
18 applying to any court for specific performance; securing the
19 appointment of a receiver to operate the project; or any other relief
20 as may be appropriate.

21 (j) (1) The committee shall allocate the housing credit on a
22 regular basis consisting of two or more periods in each calendar
23 year during which applications may be filed and considered. The
24 committee shall establish application filing deadlines, the maximum
25 percentage of federal and state low-income housing tax credit
26 ceiling which may be allocated by the committee in that period,
27 and the approximate date on which allocations shall be made. If
28 the enactment of federal or state law, the adoption of rules or
29 regulations, or other similar events prevent the use of two allocation
30 periods, the committee may reduce the number of periods and
31 adjust the filing deadlines, maximum percentage of credit allocated,
32 and the allocation dates.

33 (2) The committee shall adopt a qualified allocation plan, as
34 provided in Section 42(m)(1) of the Internal Revenue Code. In
35 adopting this plan, the committee shall comply with the provisions
36 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
37 Code.

38 (3) Notwithstanding Section 42(m) of the Internal Revenue
39 Code, the California Tax Credit Allocation Committee shall

1 allocate housing credits in accordance with the qualified allocation
2 plan and regulations, which shall include the following provisions:

3 (A) All housing sponsors, as defined by paragraph (3) of
4 subdivision (a), shall demonstrate at the time the application is
5 filed with the committee that the project meets the following
6 threshold requirements:

7 (i) The housing sponsor shall demonstrate there is a need and
8 demand for low-income housing in the community or region for
9 which it is proposed.

10 (ii) The project's proposed financing, including tax credit
11 proceeds, shall be sufficient to complete the project and that the
12 proposed operating income shall be adequate to operate the project
13 for the extended use period.

14 (iii) The project shall have enforceable financing commitments,
15 either construction or permanent financing, for at least 50 percent
16 of the total estimated financing of the project.

17 (iv) The housing sponsor shall have and maintain control of the
18 site for the project.

19 (v) The housing sponsor shall demonstrate that the project
20 complies with all applicable local land use and zoning ordinances.

21 (vi) The housing sponsor shall demonstrate that the project
22 development team has the experience and the financial capacity
23 to ensure project completion and operation for the extended use
24 period.

25 (vii) The housing sponsor shall demonstrate the amount of tax
26 credit that is necessary for the financial feasibility of the project
27 and its viability as a qualified low-income housing project
28 throughout the extended use period, taking into account operating
29 expenses, a supportable debt service, reserves, funds set aside for
30 rental subsidies, and required equity, and a development fee that
31 does not exceed a specified percentage of the eligible basis of the
32 project prior to inclusion of the development fee in the eligible
33 basis, as determined by the committee.

34 (B) The committee shall give a preference to those projects
35 satisfying all of the threshold requirements of subparagraph (A)
36 if both of the following apply:

37 (i) The project serves the lowest income tenants at rents
38 affordable to those tenants.

39 (ii) The project is obligated to serve qualified tenants for the
40 longest period.

1 (C) In addition to the provisions of subparagraphs (A) and (B),
2 the committee shall use the following criteria in allocating housing
3 credits:

4 (i) Projects serving large families in which a substantial number,
5 as defined by the committee, of all residential units is comprised
6 of low-income units with three and more bedrooms.

7 (ii) Projects providing single room occupancy units serving very
8 low income tenants.

9 (iii) Existing projects that are “at risk of conversion,” as defined
10 by paragraph (3) of subdivision (c).

11 (iv) Projects for which a public agency provides direct or indirect
12 long-term financial support for at least 15 percent of the total
13 project development costs or projects for which the owner’s equity
14 constitutes at least 30 percent of the total project development
15 costs.

16 (v) Projects that provide tenant amenities not generally available
17 to residents of low-income housing projects.

18 (4) For purposes of allocating credits pursuant to this section,
19 the committee shall not give preference to any project by virtue
20 of the date of submission of its application except to break a tie
21 when two or more of the projects have an equal rating.

22 (k) Section 42(l) of the Internal Revenue Code shall be modified
23 as follows:

24 The term “secretary” shall be replaced by the term “California
25 Franchise Tax Board.”

26 (l) In the case where the state credit allowed under this section
27 exceeds the “tax,” the excess may be carried over to reduce the
28 “tax” in the following year, and succeeding years if necessary,
29 until the credit has been exhausted.

30 (m) The provisions of Section 11407(a) of Public Law 101-508,
31 relating to the effective date of the extension of the low-income
32 housing credit, shall apply to calendar years after 1993.

33 (n) The provisions of Section 11407(c) of Public Law 101-508,
34 relating to election to accelerate credit, shall not apply.

35 (o) This section shall remain in effect for as long as Section 42
36 of the Internal Revenue Code, relating to low-income housing
37 credits, remains in effect.

O